

**BOARD OF BARBERING AND COSMETOLOGY**

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**Board of Barbering and Cosmetology**  
**Department of Consumer Affairs**  
**400 R Street**  
**Hearing Room, Suite 1030**  
**Sacramento, CA 95814**  
**October 26, 2003**

**MINUTES****BOARD MEMBERS PRESENT:**

*Dr. Della Condon, President*  
*Joe Gonzalez, Vice President*  
*Kim McInnes, Professions Member*  
*Richard Hedges, Public Member*  
*Angela Reddick, Public Member*

**STAFF MEMBERS PRESENT:**

*Cindy Walton, Interim Executive Officer*  
*Albert Balingit, Staff Counsel*  
*Bill Young, Budget Officer*  
*Anita Sturi, Staff Counsel*  
*Jaime Masuda, Staff Services Analyst*

**BOARD MEMBERS ABSENT:**

*Mercedes Barcelona, Professions Member*  
*Bonnie G. LaChappa, Public Member*

**♦ CALL TO ORDER**

President Condon called the meeting to order, starting with roll call. Members announced themselves. President Condon announced that the first part of the meeting would be an educational one for the new board members. She recognized the students present and thanked them for attending.

**♦ BOARD ORIENTATION**

President Condon turned the meeting over to Cindy Walton, Interim Executive Officer to continue the Board orientation portion of the meeting. Ms. Walton referred to Anita Scuri, Staff Counsel, Department of Consumer Affairs, and Albert Balingit, Board's Counsel, and Bill Young, Budget Officer, Department of Consumer Affairs. Before the presentation began the Board members moved to the front rows so that the presenters could speak to the audience.

Ms. Scuri introduced herself and gave background information on her credentials and her experience with other Board orientations. She explained that the legislature has introduced many laws that govern Boards and that one of the most important, in relation to the Board and its meetings, is the Bagley-Keene Open Meeting act. She emphasized the fact that the power of the Board lies in the body of the Board and not with the individual Board members. Decisions have to be made collectively and the decision making has been surrounded with certain requirements. She went on to give an overview of the Open Meeting Act and its purpose which, she said, is to ensure that discussion and actions take place in public and that notice is given to the public and agendas are detailed correctly. She went on to elaborate that the intent of the Act was to make it clear that the people of the state have not given up sovereignty to the state agencies and it is not up to the agencies to decide what the public is to know. Ms. Scuri also mentioned that it was part of the law that every board member be given a copy of the law

when they are appointed. There is also a “plain English” guide to the Open Meeting Act available. She mentioned that there are criminal sanctions for violating the law. The court can nullify any action taken in a meeting if the meeting wasn’t correctly noticed and anyone can ask for an injunction to stop or prevent violations from occurring in closed sessions. Monetary sanctions may apply if you lose the injunction. She discussed the damage to public perception when matters are discussed in closed session or when the public isn’t notified properly that the discussion was to take place. The law allows three things to take place: 1) notice must be given, 2) opportunity for public comment and 3) meetings are conducted in public except for matters in closed session. The law covers not just the decision making but the deliberation as well. It prohibits the majority of the Board from communicating directly to develop a collective concurrence among the members unless all the requirements of the Act have been met.

Mr. Hedges asked Ms. Scuri to address discussions among Board members. She informed them that it was not okay to discuss issues without following the proper guidelines. Mr. Hedges then asked if personnel matters were excluded in that, in particular the hiring of an Executive Officer. She explained how most Boards choose to have a two person committee that screens applications and sometimes the initial interviews because they can be done without notice. So there is an exception for the hiring and firing of a public employee. President Condon asked if there was anything that covered a three person meeting in a closed session. Anita didn’t recommend using this closed session item for the initial screening process but for the final interviews.

Ms. Scuri discussed what constitutes a meeting. She stated that when you have a two person committee meeting you don’t have to give notice. She informed the Board that a quorum is the majority of a Board. She explained that the law prohibits a Board from having a “committee” meeting that is, in essence, a Board meeting. For example, if a committee meeting consists of a majority of the Board only the members of that particular committee are allowed to participate in anyway, shape or form.

Ms. Scuri then went over commonly asked questions. Can you discuss or vote on something that’s not on the agenda? No. Vice-President Gonzalez asked if members of the Board could make comments in the public comment section and Ms. Scuri answered, no, she doesn’t believe they can. He also asked that even if board members went to dinner and there was a quorum they are prohibited from discussing issues without following the guidelines of the act? Other questions included: Can you vote by secret ballot? Response: No. Can you discuss the vote in a closed session? Response: The presumed answer is also no. Disciplinary action, approving examinations, pending litigation, management decisions concerning individual privacy and finally the hiring and firing of an Executive Officer are exceptions that can be discussed in closed session. Closed sessions are confidential. Board’s Counsel, Albert Balingit clarified that thought processes are not subject to subpoena. Ms. Scuri discussed common courtesy and asked that Board members refrain from giving an appearance of partiality. She encouraged people not to make personal comments and to not be too strict in front of people and to follow parliamentary procedure.

Ms. Scuri then read a “test” to the Board members with hypothetical questions that related to the Open Meeting Act to further clarify what is and is not appropriate. The Board members were advised to try to avoid situations and conversational topics in which they would tend toward discussing Board issues. The question was asked if it were appropriate to discuss issues with staff such as the Board’s Legal Counsel? Ms. Scuri responded that it was fine as long as the Board members didn’t discuss the issue with each other. Vice-President Gonzalez asked if it were okay for an Executive Secretary to call each Board member to discuss agenda topics for Board meetings. Ms. Scuri advised him that since the Executive Secretary is not a Board member, it is okay for that to occur.

A question was asked if it were inappropriate for the Board to have different time limits for public comments. Ms. Scuri said that it is not inappropriate to allow different length for comments depending upon the situation. She also suggested the Board utilize a sign-in sheet for public comments and that will allow the Board to determine an appropriate time limit.

Ms. Scuri discussed the services that the Legal Office provides and how they try to attend all the Board meetings and provide legal advice when necessary. In response to a question, she also explained the public notice requirements. Ms. Walton informed everyone that there are approximately 2500 people on the Board's mailing list.

Following this discussion there was a brief break.

After the break, Ms. Scuri said that normally they have someone from the Office of Administrative Hearings to speak about their part of the process. She invited Mr. Balingit to contribute to this portion of the discussion.

Ms. Scuri reminded the Board members that state agencies were in place to protect the consumer and asked them to keep that in the forefront of their minds when dealing with issues. There was then some discussion on the role of public members of boards and Ms. Scuri encouraged the Board to view the opinions of the public members of the Board as valid and important and encouraged the public members to participate in deliberations.

Ms. Scuri stated that the Board has two primary functions: licensing and enforcement. She handed out a chart that details the Administrative Procedure Act. Ms. Walton explained a few types of situations in which the Board has taken action against licensees including health and safety violations and licensing issues. There was a discussion on how different crimes related to the profession and how the Board would handle different situations.

Ms. Scuri explained to the Board members that the Attorney General and the Department of Justice represent the Board in cases. She went on to explain that when an accusation has been filed it gets resolved by either going to settlement or to a hearing. When a case goes to a hearing an Administrative Law Judge hears the case. She told the Board members that in some cases they would have to act as judges and that if they had personal information regarding a case they should recuse themselves from that case because they have information apart from the evidence provided. Ms. Balingit informed the group that there is a procedure for removing oneself from a case. Ms. Scuri advised the Board that they should review their disciplinary guidelines and that if they felt they wanted to change something they should sit down with their attorney and discuss possible changes.

Again, Ms. Scuri reminded the Board that when hearing cases they should act like judges and avoid letting their judgement to be swayed by personal bias and to focus on the evidence provided. A Board member asked if it is okay to seek advice from an outside source, such as their own personal hairdresser, but Ms. Scuri advised them not to, and to instead ask the Board's Legal counsel for advice on matters.

Ms. Scuri explained the choices the Board has after a judge makes a decision on a case. She said a decision can be adopted or not. Additionally, she recommended that the Board hear cases for about 6 to 8 months to get familiar with the laws and disciplinary guidelines before they decide if they want to make changes to the disciplinary guidelines. She told the Board that they have 100 days to decide if they want to adopt a decision. Ms. Walton informed the Board that there is a difference between disciplinary hearings and the "DRC" hearings and she offered to set up a meeting with the Director of the Office of Administrative Hearings.

Following some additional discussion on hearings there was a break.

Mr. Bill Young, Budget Officer introduced himself and outlined what he wanted to present. He had passed out three documents. The first document was an outline of the discussion and the other two were attachments.

Mr. Young detailed the different services that the Department of Consumer Affairs (DCA) provides the Board of Barbering and Cosmetology including purchasing, facilities, waste management, mail room, record management, accounting, personnel, etc. There is a fee for these services.

Mr. Young talked about the difference between the flexibility of private sector business and the inflexibility of state government when it comes to the matter of spending money. He also explained that there are many times when existing policies and budget constraints will most likely preclude the Board from doing just as they wish. There was also a brief discussion on the reasons behind the loan of the reserve funds to the general fund and the current state of the Board's reserve amounts. Mr. Young said it was important not to have too large a reserve fund. He suggested having a 2 or 3 month reserve.

Mr. Hedges asked why the Board can't use its reserve funds to hire more staff. Mr. Young answered that the law required a downsize in government staffing, but he also recognized that to be a weak argument. Ms. Walton explained that we have lost staff and are unable to hire staff because of the hiring freeze.

President Condon brought up the issue of \$39 from each testing fee going to Experior rather than staying within the state of California. Ms. Walton said she would get information from the Office of Examination Resources about the way the funds are paid to Experior.

Mr. Young asked if the Board members understood that there are other entities that are involved in making financial decisions. He also tried to make it clear that he doesn't, DCA doesn't nor does the EO set the fiscal policies. He emphasized the importance of staying within the operating budget and that if they exceed the set amount the Board would be held personally responsible.

There were questions brought up by Board members about their personal obligations as Board members if they break a binding lease or if they cause another expense to be incurred that puts the Board over its budget. They were told that 'yes' they could be held responsible in those situations. This led to discussion about the new test site. President Condon brought up that this might be a dangerous issue to discuss at the time because there was a quorum of Board members present.

Mr. Young then began the discussion on the annual budget process. He explained that the role of the Board would be to determine what changes needed to be made to the budget and this process is how the Board would present that information. Ms. Walton said that the Board had asked for additional resources for our Enforcement and Licensing sections but they were not entertained. Mr. Young reported that Boards/Bureaus should not ask for funding for new programs or technology at this time unless the need is critical. He said the estimate is that the state is 8-10 billion dollars minimum but the deficit is probably actually twice that amount. He said the state budget cycle starts July 1<sup>st</sup> and ends on June 30<sup>th</sup>, but that it takes one full year to balance the budget. He asked for any questions on the general process.

The final portion of Mr. Young's presentation was an update on the Board's financial standing. He informed them that 11.8 million dollars was what the legislature authorized the Board to spend for the fiscal year July 1, 2003 to June 30, 2004. He also spoke about instruction from the legislature that there would be personnel cuts of up to 12% of the personnel budget which translates to approximately \$480,000 or 8 to 9 positions. He did say that the Board's reserve money was not currently earmarked to go to the General Fund. Ms. Walton informed everyone that the Board of Barbering and Cosmetology has already lost positions in licensing and exams as well as one staff person at the Los Angeles exam site. Mr. Young explained that of 16,000 positions up for cuts, 2,000 of those positions that will be cut are actual filled positions and the remaining 14,000 positions were vacant positions that were lost.

President Condon adjourned the meeting for lunch until 1:45.

## ◆ READJOURNEMENT AND SWEARING IN OF NEW BOARD MEMBER

President Condon called the meeting back to order and introduced those in attendance to the newest board member, Angela Reddick. Following Ms. Reddick's introduction she was sworn in as a member of the Board.

Mr. Balingit introduced himself as counsel and said that he was giving this presentation as an Ethics Officer for the Department of Consumer Affairs. He said that there are three ways to become familiar with the ethics orientation. The first method is by using a CD-Rom, the second way is to view a video and the third way is to log on to a website. After Board members have familiarized themselves with the information they are to turn in a certificate stating that they had done so.

Mr. Balingit said there are these steps to consider: Step 1: Are you a public official? Yes, all board members are public officials. Step 2: Are you making or participating in a governmental decision? Step 3: What are your economic interests? Step 4: Are your economic interests directly or indirectly involved in the governmental decisions? Step 5: What kind of financial impact would there be? Step 6: Would there be one or more material gains? Step 7: If you have a conflict of interest does the public exception apply? Step 8: Is your participation likely even with a conflict of interest?

Mr. Balingit advised the Board members to consider any situations where they might be receiving gifts such as free lunches or dinners. He then discussed how the industry members of the Board can make decisions that will effect them as long as it effects the whole industry equally. He also said that even if a Board member has a conflict of interest it may be required of them to vote if the absence of their vote prevents the Board from having a quorum. He then went on to discuss conflicts other than financial conflicts such as having a friendship with a person seeking something from the Board.

The next area of conflicts is called Incompatibility Statutes. The Board members received an "incompatible work activity statement". He explained to them that they are prohibited from using the prestige of their position for personal gain. However, he noted that it is okay to mention that they are a Board member on something like a resume. Mr. Balingit brought up the issue that Board members are not to abuse personal information such as social security numbers. He ended by saying that there will be a clarification process—in reference to the ethics orientation. He then offered to supply the Board members with a book that will assist them with their ethical questions.

## ◆ BOARD ANNOUNCEMENTS AND REMARKS

President Condon announced that she and Vice-President Gonzalez attended the Long Beach show and represented the Board at the meeting. They had a meeting with a group of private school owners who presented issues. She then invited Vice-President Gonzalez to give his comments on that show.

Vice-President Gonzalez said that there were a lot of students present at the show. He praised Marion Welch for her efforts at the show. Vice-President Gonzalez believes that the industry really wants to know what is happening at the Board and that it is important for Board members to try to attend meetings and shows in order to help the licensees understand what is happening.

President Condon announced that on October 22<sup>nd</sup>, 2003 there was a hearing called by the Sunset Review Committee. She gave a presentation at that hearing. Ms. Walton and Marion Welch, Supervising Examiner was in attendance as was Mario DeSurra, Site Supervisor, Los Angeles Examination site. She thanked the Sunset Review Committee for caring about what the Board is doing. President Condon also used the opportunity to tell them about the other Board members. She explained to the committee some of the difficulties that the Board had gone through in the past especially when it became a Program and a Bureau. She stressed that she didn't blame the staff workers. She said that she thinks that nobody listened to the advice of the Advisory Committee. She talked with them about SB 362 also and how the Board is going to put together committees and task

forces to deal with the issues outlined in SB 362. She identified the most critical issues as the wait time for testing, same-day licensing, the Expirior contract, the teacher's license, the budget and Private Post-Secondary oversight. President Condon shared that in approaching legislation we should follow three principles: Is it good for the consumer, including students? Is it good for California business? And is it forward thinking? She discussed the facility issue with the SRC also. She said that there were a lot of people upset with this issue and that there would be a lunch with several legislators to discuss the issue. President Condon then spoke of SB 362 and that the Board would spend a great deal of time responding to the different aspects of the bill.

She then announced that there is a proposed job description for the job of the Executive Director available and that it is being reviewed by the Department and that they would make any changes before they actually make the application available.

An unidentified man asked President Condon if she could repeat this information the following day because there would be more people present. President Condon asked for a consensus from the Board before she agreed to share the information again the following day.

An unidentified woman asked if Board meetings would always take place on Sundays and Mondays. President Condon answered that most often the meetings would take place starting on Mondays. The woman then asked if they would be setting meeting dates anytime. She was told that setting meeting dates is on the agenda for the following day. Following this comment was some discussion about financial hardships for Board members presented by frequent traveling to Board meetings. The committee was informed that they can request travel advance claims to ease that burden.

#### ◆ **APPROVAL OF MINUTES FROM THE AUGUST 11<sup>TH</sup>, 2003 AND SEPTEMBER 15<sup>TH</sup>, 2003 BOARD MEETINGS**

President Condon asked for a motion to approve the minutes for August 11<sup>th</sup>, 2003. Vice-President Gonzalez made a motion to approve those minutes. Ms. Reddock abstained from voting, stating that she was not present for the meeting and therefore could not approve the minutes. The motion was seconded by Mr. Hedges. President Condon asked if Ms. Reddock's abstention nullifies the approval of the minutes since without her vote there would not be a quorum. After some discussion it was determined that since Ms. Reddock was present for the vote that the minutes could be approved.

President Condon wanted to discuss an issue on the minutes from August 11<sup>th</sup>, 2003. She wanted to change some personal information about her in the minutes so that it would reflect that she was a past "union" president and not a "board" president. She also wanted "the last sentence" deleted because it was inappropriate. Vice-President Gonzalez asked that the minutes be amended to reflect that the Board had asked for certain items to be placed on the agenda. Vice-President Condon asked for further amendments or corrections and then asked for the question to be called for and it was called by Mr. Hedges and seconded by Vice-President Gonzalez. The motion was voted on with all present Board members approving it except Ms. Reddock who abstained.

President Condon said that she had not had the chance to review the minutes from September 15<sup>th</sup>, 2003. A motion to wait for a later date to approve the meeting minutes was motioned by Mr. Hedges and seconded by Vice-President Gonzalez. The question was called for and approved by all Board members.

#### ◆ **ORGANIZATION AND DEVELOPMENT OF SUBCOMMITTEES**

President Condon opened the issue of Subcommittees up to the Board. An unidentified male said he felt that examination and licensing was an important issue. Ms. Reddock agreed that sub-committees would be a good idea for the Board and that they should deal with the issues and report back to the larger group. An unidentified male suggested that there be a Subcommittee to handle issues concerning the budget. Ms. Reddock suggested that the Subcommittees try to meet either when the

Board was meeting or by teleconference. There was some discussion on the logistics of having a teleconference—mainly that each teleconference location must be open to the public. President Condon asked if the Board was in agreement that there should be Sub-committees. The Board members gave verbal approval. President Condon then asked if there was a consensus that a budget Subcommittee should be added. There was discussion about whether or not “personnel” be added to the Budget Subcommittee but it was determined to be unnecessary since the only personnel function of the Board would be to hire the Executive Officer. However, President Condon did suggest that the Budget Subcommittee be combined with a Legislative Subcommittee. The Board agreed with that suggestion. President Condon asked Ms. Walton if there were any prohibitions against Board members serving on certain committees. She was told that there are no statutes that prevent Board members from serving on certain sub-committees. President Condon then introduced Consumer Education/Outreach as a possible Sub-committee. There were no other suggestions for more Subcommittees.

President Condon asked who would like to serve on the Examination/Licensing Subcommittee. An unidentified male asked how many members should serve on each committee. President Condon suggested that it should be less than a quorum of the Board. Mr. Hedges asked if they should determine the members of each Subcommittee on the following day when all the Board members were present. Dr. Condon said that the missing member would not be precluded from joining any Subcommittees. Ms. Reddock suggested that there be three people per Subcommittee.

President Condon announced that in addition to herself, Vice-President Gonzalez, Mr. Hedges and Ms. McInnes were interested in serving on the Examination and Licensing Subcommittee.

Ms. Reddock said she was interested in serving on the Legislative and Budget Subcommittee. President Condon will also serve on this Subcommittee.

For the Enforcement and Inspection Subcommittee, President Condon said that Mercedes Barcelona was interested. Mr. Hedges and Vice-President Gonzalez are also interested.

Education and Outreach will include Vice-President Gonzalez, Ms. McInnes, and possibly by Ms. Reddock and Ms. LaChappa.

President Condon suggested that the next task be looking at SB 362 and determining how to tackle all the issues it implies. She suggested it be added to the next agenda.

Board staff person Jaime Masuda asked if the Board members would consider holding their Subcommittee meetings in one location so that it would be easier to notify the public of these meetings. It was suggested that Subcommittee meetings be held two weeks prior to the Board meetings. Ms. Walton reminded the Board that they would also need to hold a task force meeting to deal with the issue of aggregate scoring. President Condon suggested that the task force meet as soon as possible. She also said she agrees with having public members attend and participate in discussions.

President Condon said that they would determine a date for the meeting on the following day and then she adjourned the meeting at 3:25 pm.